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ABSTRACT

Recent court decisions and federal legislation which have contributed to conflicts in the delivery of services to emotionally disturbed adolescents are reviewed and possible solutions are examined. The impact of the Rehabilitation Act of 1973 and Public Law 94-142 (the Education for All Handicapped Children Act) are assessed along with such decisions as Mills v the Pennsylvania Association for Retarded Citizens. The 14th Amendment dilemma for the special educator is identified: modify the student's behavior and risk due process violation charges or play it safe and fail to serve the child. Other conflicts existing in areas such as curriculum, teacher rights, and student placement are explored. Solutions to the conflicts, including suggestions such as clarifying the differences between teaching modalities and subject content, are presented. (PHR)

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"Legal and Moral Conflicts in Service Delivery for the Emotionally Disturbed Adolescent"

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Since the passage of the omnibus Rehabilitation Act of 1973 (PL 93-112) and the Handicapped Children's Education Act of 1975 (PL 94-142), it has been legally correct to say that handicapped children are entitled to fully appropriate education in the least restrictive environment, at public expense. These laws put legal substance and funding behind principles declared in the Pennsylvania Association for Retarded Citizens v. Pennsylvania, and Mills v. Washington D.C. Board of Education decisions of the U.S. Supreme Court in late 1971. The P.A.R.C. and Mills decisions are part of a long process, dating from the early 1920's, by which substantive and procedural due process under the 14th Amendment were forced into existence at more levels of local government, in this case on behalf of handicapped children's relationships with the nation's local public school systems.

If the 14th Amendment has been held to apply to the rights and mandated services of all handicapped children, one might legitimately consider the matter settled. Yet any professional who has worked in the field of publicly provided services for the emotionally disturbed or behaviorally impaired child is aware of a hailstorm of conflicting laws and professional practices. The managerial and frontline professional both deliver their services in a climate fraught with potential for civil suits, administrative hearings, and even criminal proceedings.

There do appear to be some reasons for the jugular vein working environment which surrounds those who serve the emotionally disturbed adolescent. Foremost is the global condition: American society has not yet come to grips with the idea that the emotionally disturbed adolescent can and must be productively stabilized and taught through the intensive application of public systems. The dimensions of legal and philosophical conflict arising from this undefined condition are best illustrated with categorical examples.

Champions of democracy have believed since colonial times that compulsory public instruction is a necessary encroachment upon personal liberty. To this end, most of the fifty states have placed mandatory school attendence laws within their education statutes, with occasional loopholes for religious sects, farmers' children, and opponents of racial integration. After World War II, most states tucked a small but significant addendum onto their compulsory attendence laws which excluded children with behavioral disorder, if diagnosed by a mental health professional. Further, a practice grew up under which adolescents

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in the juvenile delinquency system were discreetly ignored by school attendence officials. The first practice, allowing the parents of disturbed children to present a psychiatrist's request to void compulsory school attendence, dried up briefly after the Mills and P.A.R.C. Supreme Court decisions in 1971. There was no logic in statutorily excusing a difficult category of handicapped child from public school attendence when the Supreme Court had just mandated that such a child must be served. Incredibly, concern over public school violence and vandalism impelled many legislatures in the late 1970's to resurrect such statutes, thereby allowing the child with perhaps the strongest rationale for compulsory school attendence an opportunity to stay home, legally. The other practice- allowing juvenile delinquents to be truant illegally with everyone's blessing- still goes on. While these children are not, in the majority, emotionally disturbed, the ones who are do great damage and suffer great personal destruction while being permitted to drift uninterdicted in the twin realms of community youth delinquency and emotional disorder.

The same legal thinking which gave rise to the Mills and P.A.R.C. Supreme Court decisions also produced the earlier Tinker v. DesMoines (Board of Education) 1969 decision. With this landmark decision, substantive and procedural due process under the 14th Amendment were extended to include the behavior of all children in the public schools. The decision was not as extreme as its highly partisan supporters and detractors variously claimed; further, the decision in re Gault, 1967, had extended the same 14th Amendment rights to juveniles at the bar of the criminal justice system. But the extension of 14th Amendment due process to the behavioral management of the emotionally disturbed adolescent develops a terrific conflict which legal professionals seem willing to address only through the traditional method of allowing adversary cases to arise and be adjudicated. The special problem arises from the facts that behavior modification is a major purpose of special education for the emotionally disturbed, and that both punishment and reward, to be scientifically effective, must be placed as close to the corresponding action as possible. And the result is that the teacher of the emotionally disturbed adolescent must participate in a daily dilemma: modify the student's behavior scientifically and risk a due process violation charge, or play it safe and fail to serve the child. The notion of forcing legal recognition of the conflict by having a teacher allow himself or herself to be taken to court on a due process violation while making a correct behavior intervention is irresponsible.

Curriculum, too, is not immune to unresolved conflicts in the services for emotionally disturbed adolescents. Public Law 94-142 of 1975, and its transitional statute P.L. 93-380 of 1973, both make a strong imperative for full and normal educational services, interdicted only by necessary interventions dictated by the nature of each handicap. It is no idealistic reaching for the stars to say that the emotionally disturbed adolescent should be encouraged and permitted to earn an accredited secondary diploma. The letter and spirit of laws, court decisions, and professional practice all point to such a concept, and yet compartmentalization

of both funding formulas and teacher certification law makes this goal difficult or legally impossible. To attain a high school diploma, most states require a student to pass eighteen to twenty-two instructional units, taught by teachers certified in each field, and approximately half of the units earned in statutorily mandated subjects. For a moderately or severely disturbed student to be legally served under special education service mandates, some or all of each school day must be spent with a certified teacher of the emotionally disturbed. Not only are the teachers trained and licensed differently; the students must be reported separately with the teacher giving the service to earn revenue and satisfy accountability. This state of affairs goes unnoticed because few school districts are able to retain moderately and severely disturbed pupils long enough for them to earn a diploma anyway. The pupils are shunted off to a skill center, or later re-enter adult education, or are guided to the Job Corps recruiter, or are allowed to drop out with everyone's tacit blessing. While all of the outcomes are not bad, they still circumvent the basic fact that there is no legal or financial way for a disturbed student to receive fulltime or part-time special education services and still graduate with an accredited high school diploma.

Teacher rights have received growth under the 1st and 14th Amendments during the same years that pupil rights have expanded. Frequently professional associations and teacher unions have led the drive for teacher rights to be expanded and codified into law. Where legislatures and school boards have not chosen to specify certain rights in statute or policy, teacher unions have demanded them through the medium of a master contract arrived at through collective bargaining. Specified items such as an unencumbered planning period, a guaranteed lunch hour, mandated removal of violent or disruptive pupils from the learning environment, and limited extra duties are all appearing in master contracts around the nation. For the teacher of the emotionally disturbed adolescent, an aide can sometimes cover during short periods while the teacher gets a much needed rest. But to remove supervision entirely during social experiences of the disturbed adolescent is irresponsible. To remove an emotionally disturbed child who is being disruptive from the teaching environment on an automatic, a priori basis is to defeat the original purpose of placing the child in the special program. Thus, the same courts which require school districts to honor master teacher contract provisions to remove disruptive or violent pupils from the learning environment are also mandating school districts to place such pupils in an intensified services environment, and honor pupil due process concepts while serving the students. Such legal irresponsibility is difficult to fathom, and it mirrors precisely the unresolved conflict in the public mind: do something for handicapped children (the liberal mandate to serve), but honor the rights of the majority (the conservative mandate to remove the disruptive pupil).

A direct, head-to-head conflict between Supreme Court decisions occurs in the area of placement in special programs for disturbed children. One body of decisions holds that the school district must offer appropriate

services and deliver them. Another body of decisions, too complex to review here, holds that the district must declare the psychological evidence, and the cirteria which the evidence must match, for the child to be placed in a special program. Still a third body of complex court decisions holds that the parents may, under some circumstances, refuse to allow psychological testing of their child. This body of legal doctrine does not vacate in any way the other mandates of the court which require the district to offer special services, and which require the placement to occur after a matchup between previously published criteria against a child's tested characteristics. Clearly, this irresponsible legal situation is a setup for the parents of a behaviorally impaired child to demand appropriate services in lieu of expulsion, refuse psychological testing, and then sue the district for either failing to serve their child appropriately, or for testing without permission, or for making an illegal placement in special program services without evidence. In all cases the district is wrong, the parents hold winning legal precedent, the child's education is debilitated, the legal system earns still more education revenue, and the litigated outcome will only be appropriate to the circumstances of one case.

If the highest courts have mandated directly conflicting juridical doctrines, so, too, have the Congress mandated directly conflicting actions by statute. Public Law 93-112 is administered by the Office of Civil Rights under the new U.S. Department of Education. P.L. 94-142 is administered by the Office of Special Education and Rehabilitation Services, also under the new U.S. Department of Education, one of whose arguments for separate, Cabinet level existence was to streamline and unify federal education services! Thus, the many statutory conflicts are administered by separate offices who serve the same population, and working through fifty state departments of education. The outlook for a meaningful dialogue aimed at solutions to the many social and legal conflicts already mentioned is dismal. We could add that other federal reform legislation pertinent to safety, minority hiring, female advocacy, non-English speaking programs, and environmental protection, to name a few, all have built-in statutory conflicts and non-coordinated enforcement bureaucracies.

The old tension of the teacher as a public person versus the teacher as a private person surfaces visibly in the realm of serving the emotionally disturbed adolescent. The whole thrust of the past twenty years has been to expand the body of private rights guaranteed to the teacher, whose personal affairs in many communities had been subjected to intense moral scrutiny and interdiction. The nature of the emotionally disturbed adolescent calls forth the total commitment of the teacher in her or his personal life. Adolescents participate in sexual behavior, drug abuse, alcohol abuse, runaway, property crime, and personal crime at an unprecedented rate. Emotionally disturbed adolescents exhibit much higher threshholds of participation in these syndromes, and their families exhibit a higher rate of emotional, social, and economic stress too. The teacher of emotionally disturbed adolescents must perform home visits, parent training, liason visits with medical and youth services personnel, staffings with regular teachers, court testimony, and written evaluations. He or she must also perform highly

controversial personal services with the students: restraint of physical acting out, body searches for drugs or weapons, administration of psychoactive drugs, sexual counseling, interdiction of student fantasies, counseling about painful divorce and custody matters, and truancy intervention, to name a few. Each of these activities carries a high potential for a law suit or administrative action against the license of the teacher or administrator involved. Emotionally disturbed adolescents operate at a high level of fantasy and are often skillful at misconstruing the words or actions of professional adults credibly to obtain sympathy or other emotional payoff. Virtually no one, including the mental health profession, understands the problem, leaving the teacher and administrative personnel to serve the emotionally disturbed adolescent in a climate of personal fear. And this is a professional endeavor which utterly demands cool, composed judgment, hour after hour, from the service delivery personnel. The problem will not be solved until school systems are clothed with the kind of protective mechanisms for their personnel who serve the handicapped as one finds in effect at mental and correctional institutions.

The narrative thus far appears dismal, and so one might ask if conditions are really so bad, or, if they are, why the problem is not more widely perceived. Perception and evaluation are related: professionals who work with disturbed adolescents cannot continuously speak negatively about their working conditions without damaging program services, and most adolescents with severe emotional disorders are not enrolled in school programs. The etiology of conflict can be clustered for definition, but not for resolution.

First, too many due process reforms have been simultaneously mandated for them to occur without internal conflict. Second, the federal government has mandated certain reforms, and has funded them categorically, but the milieu in which they occur falls under the jurisdiction of many state and local governmental units. Third, the courts give a categorical opinion on one specific case, which then becomes a generalized policy on thousands of cases which have different specifics. Fourth, the realm of emotional disorder bounces in the public mind among the fields of mental health, delinquency, immorality, family disorder, substance abuse, poverty, racial or cultural characteristics, job placement for unemployed youth, and, most recently, public education. While these etiological conditions can be stated, they are vastly beyond resolution at anything less than a total, societal level.

The areas of conflict themselves can be clustered in a less global, less overwhelming form. First, the statutory and bureaucratic conflict at federal level is a recent creation, capable of specific definition. Second, the confusion between federal and local government is an innate characteristic of our society which has parallels in nearly every realm of life. Third, over generalizing the impact of federal court decisions by projecting them directly into the daily functions of service delivery is a relatively new phenomenon, and again it occurs in many realms. Fourth, education has not accepted the fact that it is the primary service delivery realm of the mildly and moderately emotionally disturbed adolescent, and a major supporting handmaiden at least in the cascade of services for the severely disturbed adolescent. Fifth, the professionals who operate programs for the emotionally distrubed have not organized their forces in a manner comparable to physicians, police, lawyers, psychologists, engineers, the trades, and many

kinds of technicians. The concomitant of this situation is the sixth, namely, the primitive state of law and professional practices which govern the field.

If these groupings of the etiological and functional realms have correctly defined the conflicts within services for the emotionally disturbed adolescent, it should be possible to set boundaries for ultimate conflict reduction in the categorical examples we have enumerated. The conflicts cannot be reduced at present because of the unresolved tensions which produce them, but the dynamics of conflict reduction merit a definitional attempt.

The problem of not serving the emotionally disturbed adolescent through overt and covert mechanisms can be addressed by offering society a successful family of models in the cascade of services. Conflict disappears in the face of success in American society. Once the successful models are quantified, they must be delivered into the legal and political realms with a strong, positive unity on one theme: severely emotionally disturbed adolescents must be stabilized and educated. The social imperative can follow the recognition of modalities for success, and conflict within compulsory attendence laws can then be eliminated in a political climate of acceptance.

Conflict resolution between due process mandates and scientifically administered behavior modification can occur if professionals can demonstrate the efficacy of behavior modification. The extreme limitations which the courts have recently placed upon administrators who work with violent or disruptive children reflect utopian responses to a small number of stupid authority abuses or excesses. Professionals who serve emotionally disturbed adolescents must strike boldly to achieve success without genuine instances of authority abuse, and then deliver the quantified results of this success into the legal realm for action.

The curriculum muddle can be resolved within the professional ranks of education by clarifying the differences between teaching modalities and subject content. A category of teachers, certified in both secondary subjects and special education techniques for disturbed adolescents, must be created. Accreditation laws must be changed to reflect the actualities of each modality of special education, encouraging every type of handicapped youngster to master as much knowledge as possible, while learning within the correct framework of service delivery. This issue, unlike other conflicts enumerated here, can be resolved now.

The conflict between mandated teacher rights and enlarged service rerequirements for the disturbed pupil can be addressed by acknowledging the fact that both situations are here to stay. Adequate personnel must be employed to provide both sound working conditions for the professional and adequate supervision for the pupil. Master contracts and state educational law governing pupil behavioral control must be modified to guarantee full, increased controls over the behavior of disturbed pupils and sufficient staff members to exercise that control. Some of this outcome then translates into increased costs, but these costs would diminish in the long run because the service would be more effective and less diminished with unproductive expenditures on legal and administrative safeguards.

The conflict of mandating placement and services for disturbed children

and then allowing the parents to frustrate the system by refusing testing is a pure outcome of irresponsible reformist activism. The case for mandated services rests upon solid evidence of a need matched with solution. The case for allowing the family to demand education while retaining the right to refuse scientific testing for correct, legal placement rests upon the political emotionalism of the 1960's, when many well educated people accepted blindly the mindless doctrine of opposing authority for the sake of opposing authority. Professionals in the field of educating the emotionally disturbed should sponsor both legislation and court cases through the framework of their professional organization to seek mandated scientific evaluation of disturbed children within a framework of procedural safeguards.

The direct statutory conflict in federal code can be corrected by the same means that it began: writing new legislation and gaining a legislative majority to pass it. The danger is that good points in the various laws may be rescinded in a legislative climate of reaction and anger, when a rational approach is needed. Professionals who work with the handicapped should inventory the statutory overlaps, gaps, and conflicts and present a single, comprehensive corrective package to the Congress. Failure to take this action will certainly result in mindless program cancellation similar to the passage and inplementation of Proposition XIII in California in July of 1978.

The problem of harmonizing the laws and professional practices affecting teachers in their public and private lives should be addressed jointly by the general teacher unions and associations with the more specialized organizations for special education professionals. The fields of health, law enforcement, and corrections possess statutorily sound and well litigated bodies of doctrine through which to govern and protect their members. Professionals who serve the emotionally disturbed adolescent are in a high risk and high burnout field. They should be clothed with many kinds of authority and personal protection which are not accorded to generalists in education. No doubt their expectations for salary will increase as their legal authority and protections increase. All performance factors point strongly to the idea that teachers and administrators of the emotionally disturbed adolescent should receive a higher salary than most of their counterparts in other fields.

We have itemized categorical conflicts in the field of serving the emotionally disturbed adolescent. We have summarized the etiology and nature of these conflicts. Finally, we have pointed out some directions by which to work for solutions. There will be no final solutions, however, until American society recognizes that we possess both the successful technology and a strong moral imperative to stabilize and educate the disturbed adolescent. It is our obligation to demonstrate the successful technology and use it productively to achieve the moral imperatives. By these actions, conflict will dry up and our society will become more wholesome and productive.

Biographical

Roberta S. Ramsey holds the Specialist in Education degree and is a candidate for Ph.D. in Special Education Administration at the University of Florida. She is the Program Specialist in Special Education for the Putnam County School District in Palatka, Florida. She has taught all ages of emotionally disturbed pupils in both fulltime centers and resource room programs. Her ten years of professional experience include agency coordination, parental training, new teacher training and observation, staff training, curriculum design, consultant duties with seven school districts and two rehabilitation agencies, research in behavior disorders and legal issues affecting the rights of teachers, and college classroom teaching.

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Roberta and Russell reside in Melrose, Florida and are the parents of six children aged one to twenty-one.

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